

ORDERED.

Dated: June 12, 2019



Catherine Peek McEwen
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Tampa Division
www.flmb.uscourts.gov**

In re:

BRIAN C. ABEL,

Debtor in a Foreign Proceeding.

Case No.: 8:19-bk-05354-CPM
Chapter 15

**ORDER DENYING AS MOOT
MOTION FOR PROVISIONAL RELIEF UNDER § 1519**

THIS CASE came on for consideration of the *Emergency Motion for Ex Parte Entry of An Order (1) Granting Provisional Relief Pending Hearing on Recognition Pursuant to 11 U.S.C. § 1519, and (2) For Additional Relief Including Emergency Hearing* (Doc. No. 2) (the “Motion”), filed by James Neill (“Foreign Representative”), in his capacity as foreign representative and trustee in bankruptcy of the Northern Ireland insolvency proceedings of debtor Brian Abel (the “Debtor”), through Mr. Neill’s local attorney, Matthew J. Vaughn. On June 5, 2019, prior to filing the Motion, the Foreign Representative filed a Chapter 15 Petition for

Recognition of a Foreign Proceeding (the “Petition”) (Doc. No. 1), seeking recognition from this Court of the proceeding currently pending before the High Court of Justice in Northern Ireland, Chancery Division (Bankruptcy) (the “Northern Ireland Bankruptcy Court”) Case Number 17/105835, Court Order CO9233532 (the “Northern Ireland Proceeding”), as a foreign main or nonmain proceeding under chapter 15 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).

In the Motion, the Foreign Representative requested certain provisional relief until the Petition is adjudicated, including immediate relief without a hearing to toll the statute of limitations under 11 U.S.C. §§ 103(a) and 108(a) related to certain causes of action that the Foreign Representative may have. These causes of action include a purported claim relating to an alleged fraudulent transfer of real property located within this district from the Debtor to a third party. Upon due consideration of the Petition, the Motion, together with the exhibits thereto, and the Court file, the Court finds that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. §§ 109 and 1501, and that venue of this proceeding is proper in this judicial district pursuant to 28 U.S.C. §§ 1410(1) and (2) because the Debtor has a claim involving real property located within this District. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P).

In the Motion, the Foreign Representative represented that important deadlines for commencing civil actions were rapidly approaching, and that he was required to take action to preserve the rights of the Debtor and the Northern Ireland Proceeding’s creditors prior to a recognition determination. Related to this, the Foreign Representative sought provisional relief under 11 U.S.C. § 1519 to toll the statute of limitations pursuant to 11 U.S.C. § 108(a) for civil

actions that may be available to the Foreign Representative, the Debtor, or the Debtor's creditors pending the recognition hearing. At issue is whether such relief is necessary.

Bankruptcy Code § 103(a) explicitly states that Chapter 1, along with §§ 307, 362(o), 555 through 557, and 559 through 562 apply to cases under chapter 15. 11 U.S.C. § 103(a). Within Chapter 1, § 108(a) has certain tolling provisions that “essentially grant a two-year extension of time for a trustee in bankruptcy to commence actions in the interests of the estate, provided that the applicable time period had not expired before the filing of the petition.” *In re Fairfield Sentry Ltd.*, 452 B.R. 52, 58 (Bankr. S.D.N.Y. 2011). “These provisions allow a trustee additional time, upon stepping into the shoes of the debtor, to discover and evaluate potential causes of action or perform other acts required to preserve the debtor's rights.” *Id.* (citation omitted).

Section 108(a) reads as follows:

If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired *before the date of the filing of the petition*, the trustee may commence such action only before the later of – (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (2) two years after the order for relief.

11 U.S.C. § 108(a) (emphasis added).

Under 11 U.S.C. § 101(42), the term “petition” includes a petition filed under chapter 15. *See also In re Millennium Global Emerging Credit Master Fund Ltd.*, 458 B.R. 63, 87 (Bankr. S.D.N.Y. 2011). Furthermore, 11 U.S.C. § 1504 states that “[a] case under [chapter 15] is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.”

Based on the language of §§ 103(a) and 108(a), the Court concludes that the tolling provisions of § 108 apply automatically to chapter 15 proceedings, and that it is, therefore, unnecessary for the Foreign Representative to obtain provisional relief declaring § 108 applicable in this chapter 15 case. *See Fairfield Sentry*, 452 B.R. at 61; *see also In re Massa Falida Do Banco Cruzeiro Do Sul S.A.*, 567 B.R. 212, 228-29 (Bankr. S.D. Fla. 2017) (finding that “[s]ection 108(a) is applicable in Chapter 15 proceedings”).

Accordingly, it is **ORDERED**:

1. The Motion is DENIED as moot.
2. The Foreign Representative is automatically entitled to the availability of § 108 relief in this chapter 15 case.

Attorney Matthew J. Vaughn is directed to serve a copy of this order on all parties entitled to service and file a proof of service within 3 days of entry of the Order.